

**DEC 12 2005**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSE DAVID LOPEZ-CASTRO,

Defendant - Appellant.

No. 04-10438

D.C. No. CR-04-00077-JCM/LRL

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Nevada  
James C. Mahan, District Judge, Presiding

Submitted December 5, 2005<sup>\*\*</sup>

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Jose David Lopez-Castro appeals his conviction after his conditional guilty plea to unlawful reentry of a previously deported alien in violation of 8 U.S.C.

§ 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Lopez-Castro contends that the district court erred in denying his motion to dismiss the indictment on the ground that his prior removal was invalid.

Specifically, Lopez-Castro argues that he was denied a fair opportunity to present his claims for asylum and withholding of removal before being deported.

Reviewing de novo, we conclude that there was no due process violation in his deportation proceeding because, at the time of his 1999 removal proceeding,

Lopez-Castro had failed to present a valid claim for relief from removal. *See*

*United States v. Pallares-Galan*, 359 F.3d 1088, 1094, 1095 (9th Cir. 2004) (citing

8 U.S.C. § 1326(d)). Even assuming a due process violation, Lopez-Castro has

failed to establish that he suffered any prejudice. *See id.* at 1103-04 (citing *United*

*States v. Arrieta*, 224 F.3d 1076, 1079 (9th Cir. 2000)).

**CONVICTION AFFIRMED.**